



# Federal Communications Law Journal

FORMERLY  
FEDERAL COMMUNICATIONS BAR JOURNAL

VOLUME 59

MARCH 2007

NUMBER 2

---

## Articles

### **Does Video Delivered over a Telephone Network Require a Cable Franchise?**

By Robert W. Crandall, J. Gregory Sidak & Hal J. Singer..... 251

This Article examines whether, on legal or policy grounds, video services provided over a telephone network should be regulated as a traditional cable service or whether a different approach is warranted. The Authors find that municipal franchise requirements for video services provided over telephone networks would reduce consumer welfare. The Authors estimate that, even without considering any welfare gains owing to higher quality, the consumer welfare gains from entry exceed the potential loss in franchise fee revenue to municipalities by a factor of nearly three to one.

### **Necessary Knowledge for Communications Policy: Information Asymmetries and Commercial Data Access and Usage in the Policymaking Process**

By Philip M. Napoli & Michelle Seaton..... 295

Communications policymaking increasingly relies upon research derived from large-scale databases manufactured and marketed by commercial organizations. One byproduct of this situation is that substantial inequalities in access to these data arise. These information asymmetries can result in research that fails to reflect the policy considerations of the full range of interested stakeholders. This Article explores these issues via a case study of the FCC's 2003 media ownership proceeding and offers suggestions for how existing disparities in access to policy-relevant data might be addressed.

### **Competition After Unbundling: Entry, Industry Structure, and Convergence**

By George S. Ford, Thomas M. Koutsy & Lawrence J. Spiwak ..... 331

In the last few years, U.S. telecoms policy has shifted from encouraging the sharing of existing networks to facilitating the deployment of advanced communications networks. Given the large capital expenditures required for these networks, there can be only a few of such networks. In light of the natural forces that limit the number of facilities-based suppliers, it is vital for policymakers to investigate and implement rules that make markets more conducive to facilities-based entry and eliminate any existing rules that discourage deployment. The purpose of this Article is to provide a simple

conceptual framework to evaluate the effect of particular rules and regulation on the construction of advanced communications networks and the expansion of existing networks into new markets. We provide numerical examples and a number of applications to illustrate how the conceptual framework implicates particular rules and regulations as to their effect on facilities-based entry. Applications include an analysis of convergence, regulated limitations on service offerings, the pernicious effects of cable franchising, and the potential for collusion.

## **The Telecommunications Economy and Regulation as Coevolving Complex Adaptive Systems: Implications for Federalism**

By Barbara A. Cherry ..... 369

Satisfying the constraints for sustainable regulatory telecommunications policies is more challenging for regulatory regimes based on competition than monopoly. In an earlier paper, Johannes Bauer and I used complexity theory to improve our understanding of the requirements for sustainable telecommunications policies, showing that regulation has a diminishing capacity to achieve specifically desired outcomes and greater attention must be paid to the adaptability of policies and policymaking processes themselves. The present Article examines the implications of the complexity theory perspective for federalism. Federalism is a distinctive (patching) algorithm that confers system advantages for adaptability through diversity and coupling of policymaking jurisdictions—mechanisms for both experimentation and stability—that are essential for development of sustainable policies. An important implication is that policies of complete federal preemption, and particularly full deregulation, must be approached with great caution because such policies eliminate the adaptive properties of a more highly patched and coupled policymaking system.

## **Market Definition, Merger Review, and Media Monopolization: Congressional Approval of the Corporate Voice Through the Newspaper Preservation Act**

By Amy Kristin Sanders ..... 403

In this Article, the Author examines the Newspaper Preservation Act, a federal antitrust exemption for newspapers, in light of the changing landscape of media ownership. After doing so, she argues that federal merger review for media companies should be revised to include a broader definition of 'geographic market' and a more restrictive definition of 'failing firm' to discourage the corporatization of the media.

## **Note**

## **Echelon's Effect: The Obsolescence of the U.S. Foreign Intelligence Legal Regime**

By Matt Bedan .....425

The technological progress of the past thirty years has vastly increased the surveillance capabilities of the global intelligence community. At the same time, the law governing the use of this technology and its consequent information has remained largely static. This lack of adjustment, for better or worse, has rendered federal foreign intelligence surveillance law irrelevant in many respects.

## **Book Review**

*Conflict, Terrorism and the Media in Asia*

By Rebekah L. Bina.....	445
-------------------------	-----

The fourth and latest release in a series of publications on the impact of media and changes in societal culture in Asia, this book provides a study of the subnational conflicts across Asia and the global "War on Terror." The authors examine the condition of free press, access to media, and diversity in news reporting to explore how media is used as a tool to facilitate ideological coalition, shelter populations, and maintain political stability.